TRANSMITTAL OF APPEAL BRIEF (Large Entity)	Docket No. BKA.0006US

In Re Application Of: **Oleg B. Rashkovskiy**

Application No. 09/690,549	Filing Date October 17, 2000	Examiner Rueben M. Brown	Customer No. 21906	Group Art Unit 2611	Confirmation No. 2613

Invention: **Storing Advertisements**

COMMISSIONER FOR PATENTS:

Transmitted herewith in triplicate is the Appeal Brief in this application, with respect to the Notice of Appeal filed on
January 20, 2006

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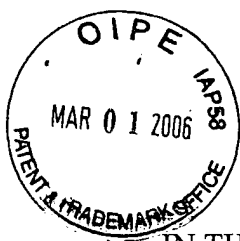
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Dated: **February 27, 2006**

CC:

P30LARGE/REV06

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Applicant:	§	
Oleg B. Rashkovskiy	§	Art Unit: 2611
	§	
Serial No.: 09/690,549	§	Examiner: Rueben M. Brown
	§	
Filed: October 17, 2000	§	Atty Docket: BKA.0006US
	§	
For: Storing Advertisements	§	

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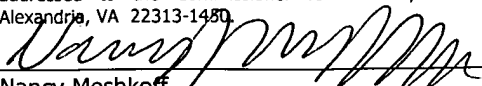
APPEAL BRIEF

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REAL PARTY IN INTEREST

The real party in interest is the assignee BlackArrow, Inc.

RELATED APPEALS AND INTERFERENCES

None.

STATUS OF CLAIMS

Claims 1-46 (Canceled).

Claims 47-57 (Rejected).

Claims 47-57 are rejected and are the subject of this Appeal Brief.

STATUS OF AMENDMENTS

Amendments to the claims from the Reply to Final Rejection, filed on December 21, 2005, have not been entered.

SUMMARY OF CLAIMED SUBJECT MATTER

In the following discussion, the independent claims are read on one of many possible embodiments without limiting the claims:

47.   A system comprising:

a receiver (10, Figure 1) to receive content, an advertisement (page 2, lines 15-22) and update instructions (page 6, lines 7-23) for said advertisement;

a cache (8, 30, Figure 1), coupled to said receiver, to store said content and said advertisement (page 3, lines 12-14; page 6, line 24-page 7, line 2); and

a shell (12, Figure 1), in said receiver, to find a place to insert the advertisement in the cached content before the cached content continues to be output for display (page 5, lines 14-20; page 7, lines 12-26), said receiver to receive an update for said advertisement and to automatically replace said advertisement with said update using said instructions (page 8, line 24-page 9, line 2; page 9, lines 11-19).

FIG. 1

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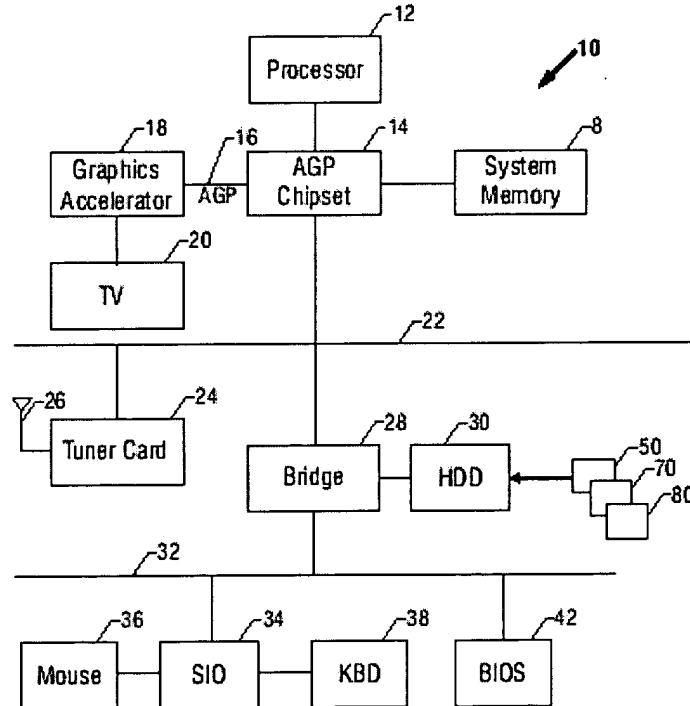
At this point, no issue has been raised that would suggest that the words in the claims have any meaning other than their ordinary meanings. Nothing in this section should be taken as an indication that any claim term has a meaning other than its ordinary meaning.

GROUNDS OF REJECTION TO BE REVIEWED ON APPEAL

A.   Are claims 47-50 and 54-57 anticipated by Rosser?

B.   Are claims 51-54 unpatentable over Rosser in view of Khoo?

ARGUMENT

A.   Are claims 47-50 and 54-57 anticipated by Rosser?

Claim 47 calls for a receiver to receive content, an advertisement and update instructions for said advertisement. The claim further calls for the receiver to receive an update for said advertisement and to automatically replace said advertisement with said update using said instructions.

Does Rosser Teach Updating Advertisements?

The office action rejects the claim based on Rosser. The office action seems to concede that nothing in Rosser suggests the use of update instructions but, instead, suggests that the words "update instructions" are broad enough to read on the LVIS information, such as information attached to a proposed insert, sent from the head end and used to determine which advertisement(s) will be inserted in the content, using the viewer usage profile.

In the cited Rosser reference, based on the user profile, different inserts may be selected for viewing at particular receivers. The concept of any type of update to an advertisement or anything else is never discussed. In other words, Rosser never contemplated the need to send what he calls an insert and to later decide that that insert should be updated and automatically replaced. Thus, it is respectfully submitted that the concept of updating an insert is nowhere provided within the reference and the concept of automatically updating an insert is nowhere provided. To do so would seem to involve sending the insert at one time and then later deciding that the insert would be replaced with an updated insert and then providing some mechanism to replace the insert that was originally provided with a more preferred one.

Certainly, any attempt to read the claim on a system which only sends one insert at one time and to suggest that that teaches sending both an insert (i.e. an advertisement) and an update for the insert (i.e. an update for the advertisement) would be based on an impermissible reading of the claim. There must be two things. There must be the advertisement and there must be the update. Then, there must be something which automatically replaces the original insert or advertisement with the update. None of these features are anywhere suggested in the reference.

It is clear that the reference merely suggests providing one or more inserts, and selecting the appropriate insert. That selection is apparently based on a user profile to provide the best

insert for a particular user. But nowhere is there the contemplation that advertisement in particular might need to be updated over time and thereby automatically replaced.

Therefore, reversal of the rejection on this ground is respectfully requested.

Does Rosser Teach Storing Content as Opposed to Storing Advertisements?

Additionally, the Rosser reference does not teach caching both content and an advertisement as provided in both the unamended and proposed amended claim. During an interview, an issue was raised by the Examiner on this point, noting Rosser at column 13, lines 13-18. This portion suggests alternate video or television feeds to the video and audio storage unit 152.

The issue then is whether these alternate video or television feeds are inserts or content. The next sentence seems to answer this question conclusively: "This alternate video feed would typically be relaying a number of different advertisements ...." Thus, the alternate video or television feeds are advertisements, not content.

There is no teaching of caching the content (in the case of the unamended claim) or caching content and finding a place to insert the advertisement "while said broadcast content is still stored in the cache" (as recited in the proposed amended claim). Therefore, the rejection should be reversed.

Dependent Claims

Claim 48 calls for the receiver to receive an update with a pointer, the receiver to use the pointer to store the update at a location. The office action suggests that this is inherently within the reference. But in order to be inherent, it must necessarily be present. In this case, it must necessarily not be present.

Since there is no update, there would be no pointer to correlate the update to the original insert that is to be replaced. If Rosser were to provide updates that are specific to particular programs, he obviously could equally well simply store all the inserts together at the same location without the need for any type of pointer.

Therefore, the rejection of claim 48 should be reversed.

Claim 49 calls for a receiver to receive content interrupted by an advertisement. The receiver to provide a marker in the content to indicate where the advertisement should be inserted. The pointer is provided with the marker.

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The office action suggests that somewhere in the reference is such a marker. It is suggested that a marker reads on the discussion that insertions are placed at particular points to appear seamless.

It is respectfully submitted that this position is not commensurate with the claim. The claim calls for the insertion of a marker to find a place to insert. There is nothing remotely related to the use of a marker. Whether or not Rosser actually meets any objective definition of seamless insertion, he does not use a marker to make the insertion. His reference is totally silent on how he makes the insertions.

Therefore, the rejection of claim 49 should be reversed.

On the same basis, reconsideration of the rejection of claim 50 is requested. There is nothing in the cited reference that identifies the marker in the cache content because Rosser never even mentions markers or anything like a marker. The claim further calls for the use of a pointer to locate an advertisement stored in the location indicated by the pointer. There is no pointer and there is no marker and, therefore, there is no basis for the rejection of claim 50.

B. Are claims 51-54 unpatentable over Rosser in view of Khoo?

With respect to the rejections based on Khoo, it is respectfully submitted that this reference is irrelevant because it transmits the list of customized media the wrong way. It sends the list from the head end to the user, not from the user back to the head end. For example, claim 51 calls for the receiver to receive content interrupted with an advertisement, the receiver to determine whether the advertisement was previously stored. Nothing in Khoo has anything to do with claim 51.

Claim 52 calls for maintaining a list of stored advertisements and to compare information about a particular advertisement to information on the list of stored advertisements. In Khoo, the user is provided with a media list and there is no comparison and no discussion of advertisements.

Claim 53 calls for only storing advertisements if the advertisement was not previously stored. Nothing in Khoo has anything to do with such a feature.

Finally, claim 54 calls for the receiver to upload the list of stored advertisements to a remote server. Here is where Khoo goes in the opposite direction. Khoo provides the alleged list to the receiver. The receiver does not provide the list to the server.

Since Rosser teaches none of these things, as conceded, and Khoo has no bearing on the claimed limitations, reconsideration of the rejection of claim 54 would be appropriate. The fact that the user might modify the list that he receives from the head end is not commensurate with the scope of claim 54. Regardless of whether data might be served at a server, there is nothing in any of the references cited to date that would teach any reason to upload a list of stored advertisements along with pointers to a remote server. Of course, it is possible to do this and that is apparently the import of the Examiner's remarks. But there is no teaching of any reason to do it in any of the cited references. Therefore, the rejection fails to make out a *prima facie* rejection.

The suggestion that user personalized data is being sent upstream is, of course, a stretch since the claim calls for a list of stored advertisements. This would not even constitute user personalized data. Certainly, even if the idea of updating user personalized data were known, this does not teach uploading every different type of information and every different type of transfer from a receiver to a remote server.
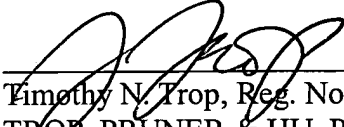
Therefore, the rejections should be reversed.

Applicant respectfully requests that each of the final rejections be reversed and that the claims subject to this Appeal be allowed to issue.

Respectfully submitted,

Date: ___2/27/06___

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CLAIMS APPENDIX

The claims on appeal are:

47.   A system comprising:

a receiver to receive content, an advertisement and update instructions for said advertisement;

a cache, coupled to said receiver, to store said content and said advertisement; and

a shell, in said receiver, to find a place to insert the advertisement in the cached content before the cached content continues to be output for display, said receiver to receive an update for said advertisement and to automatically replace said advertisement with said update using said instructions.

48.   The system of claim 47 said receiver to receive said update with a pointer, said receiver to use said pointer to store said update at a location.

49.   The system of claim 48 wherein said receiver to receive content interrupted by said advertisement, said receiver to provide a marker in said content to indicate where said advertisement should be inserted, said pointer provided with said marker.

50.   The system of claim 49 wherein said receiver to identify said marker in said cached content and use said pointer to locate an advertisement stored in the location indicated by said pointer.

51.   The system of claim 47 wherein said receiver to receive content interrupted with said advertisement, said receiver to determine whether said advertisement was previously stored.

52.   The system of claim 51 wherein said receiver to maintain a list of stored advertisements and to compare information about a particular advertisement to information on said list of stored advertisements to determine whether said particular advertisement was previously stored.

53.   The system of claim 52 wherein said receiver to store said advertisement only if the advertisement was not previously stored.

54. The system of claim 52 wherein said receiver to upload said list of stored advertisements along with said pointers to a remote server.

55. The system of claim 47 wherein said receiver to receive information about when to update said advertisement and automatically update said advertisement in accordance with said information.

56. The system of claim 55 wherein said receiver periodically, automatically update advertisements.

57. The system of claim 47 wherein said system is a set-top box.

EVIDENCE APPENDIX

None.

RELATED PROCEEDINGS APPENDIX

None.